IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2101 OF 2004

Shri Bapurao Shantaram Nagpure,)
Age 51 yrs., Occ: Service,)
R/o.C/o. Shri Suryakant Shantaram)
Nagpure, 5, Vrindavan Apartment,)
Ramdas Swami Nagar,)
Takli Road, Nashik - 6.).. Petitioner

Vs.

Shri Ramavtar @ Bably Malla,)
Major, Occ: Business,)
R/o.Elore Mens Wear, Shop No.1,)
Vrindavan Apartment, Ramdas Swami)
Nagar, Takli Road, Nashik - 6.)..Respondent

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Shri R.M.Hardix for Shri P.N.Joshi for the petitioner.

Shri M.S.Karnik for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29th NOVEMBER, 2004.

ORAL JUDGMENT :

1. Rule. By consent, the Rule is made returnable forthwith. Perused the records.

2. The petitioner challenges the judgment and order passed by the lower appellate Court dismissing the suit which was filed by the petitioner for

eviction of the respondent on the ground of default in payment of rent. The challenge is on the ground that the respondent had failed to comply with the provisions of law comprised under Section 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter called as "the said Act".

3. The notice demanding the arrears of rent was issued by him to the respondent on 9th January, 1994. Though the respondent filed an application under Section 11(3) of the said Act for fixation of standard rent, the respondent did not deposit all the arrears of rent on the first date of hearing on filing of the application for eviction of the respondent from the suit premises. Considering the same, it is the contention of the petitioner that the Court below erred in ignoring the provisions of Section 11(3) of the said Act. Reliance is sought to be placed in the decision of the learned Single Judge of this Court in **Gulab Gangaram Shindore v. Kumarpal Somchand Shah, since deceased, Through his heirs & Lrs.,** reported in 1999(4) All MR 256.

4. In the facts and circumstances of the case, the provisions of Section 12(3)(b) of the said Act are not at all attracted to the present case. Section

12(3)(a) and (b) was deleted and replaced by Section 12(3) of the Maharashtra Act, 1987. Undisputedly, the matter in question relates to the year 1995 and the notice demanding the arrears was issued on 9th January, 1994. Being so, the provisions of law attracted are comprised under Section 12(3) as amended in the year 1987.

5. Undisputedly, in terms of Section 12(2) of the said Act, no suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882. At the same time, Section 11(3) of the said Act provides that if any application for fixing the standard rent or for determining the permitted increases is made by a tenant who has received a notice from his landlord under sub-section (2) of section 12, the Court shall forthwith specify the amount of rent or permitted increases which are to be deposited in Court by the tenant, and make an order directing the tenant to deposit such amount in Court or at the option of the

tenant make an order to pay to the landlord such amount thereof as the Court may specify, pending the final decision on the application. It further provides that a copy of the order shall be served upon the landlord. Out of the amount deposited in Court, the Court may make an order for payment of such reasonable sum to the landlord towards payment of rent or increases due to him as it thinks fit. It further provides that if the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.

6. The above referred provisions of law comprised under Sections 12(2) and 11(3) discloses that the landlord is not entitled to institute a suit for eviction unless the same is preceded by a notice issued and served upon a tenant, one month in advance, requiring him to pay the arrears of rent. In case of a dispute regarding quantum of rent, the tenant is entitled to file an application for fixation of the standard rent or for determination of the permitted increases in terms of Section 11(3) of the said Act. Once such an application is filed, it is the duty of the Court to pass an order directing the tenant to deposit certain amount in the court within the

specified time and in case the tenant fails to comply with the requirements under Section 11(3) of the said Act, the proceedings in terms of Section 11(d) are to be dismissed. In terms of Section 12(3)(b) of the said Act, in case the tenant deposits the entire rent as fixed by the Court at the first date of hearing of the suit within the time specified by the Court, in that case no decree of eviction could be passed against the tenant.

7. Undisputedly, in the case in hand, the application under Section 11(3) of the said Act was filed by the tenant and it was heard and disposed of along with the suit for eviction filed by the petitioner-landlord. It is not the case of the petitioner at any point of time during the pendency of the suit that the petitioner had at any time made grievance about the fact that the tenant was liable to be evicted from the suit premises on account of non-compliance of Section 12(3) of the said Act. It is only upon the failure on the part of the landlord to establish his case for eviction of the respondent -tenant on the ground of default in payment of rent, the petitioner has sought to take shelter of the provisions of law comprised under Section 12(3) of the said Act to justify the eviction order against the

tenant. It cannot be disputed that mere filing of an application for fixation of the standard rent would not absolve the tenant from his responsibility to pay the rent to the landlord. Certainly the tenant will have to bring the same to the notice of the Court for issuance of direction to deposit rent during the pendency of the proceedings. However, in a case where the Court proceeded to dispose of the proceedings under Section 11(3) along with the main application and the same was not objected to, at any point of time and in any manner by the landlord, and yet the grievance is sought to be made by the landlord with reference to non-compliance of Section 12(3) of the said Act after the conclusion of the case before the trial Court. In such circumstances, it is to be held that the grievance is purely after-thought. The order to be passed in the proceedings under section 11(3) having been postponed till the disposal of the said proceedings for eviction, and that too without any objection in that regard by the landlord, it is too late for the landlord to complain of the tenant being defaulter.

8. As already observed above in the case in hand, there was neither any grievance by the landlord for non-compliance of Section 12(3) of the said Act during

the pendency of the proceedings before the trial Court, and at the same time there was no objection by the landlord to dispose of the application filed under Section 11(3) along with the main suit for eviction of the respondent from the suit premises. This apparently discloses that the right to claim eviction in terms of section 12(3) was impliedly waived by the landlord in the facts and circumstances of the case as well as in respect of the obligation of the tenant to deposit the rent in terms of Section 12(3)(b) of the said Act. It is only because the petitioner did not succeed in establishing the case for eviction of the respondent for default in payment of rent that the decree of dismissal of the suit is sought to be challenged on the ground of non compliance of the provisions of Section 12(3)(b) of the said Act. In the facts and circumstances of the case, therefore, the decision in **Gulab Gangaram Shindore's case (supra)** is not applicable as it is clearly distinguished on facts, and therefore, no fault can be found with the impugned order nor the same warrants any interference in exercise of the writ jurisdiction.

9. The petition, therefore, fails. The rule is discharged with no order as to costs.